

SIR JAMES
FERGUSON
v.
WORDSWORTH.

PRESENT,
LORD CHIEF COMMISSIONER.

1820.
December 18.

SIR JAMES FERGUSON v. WORDSWORTH.

AN action by the defender, for the price of a horse.

Found that a horse was not unsound.

DEFENCE.—The horse was unsound, and returned.

ISSUES.

“ Whether a grey horse, admitted to
“ have been sold and delivered by the de-
“ fender to the pursuer at Edinburgh, on the
“ 2d day of June 1819, warranted as a sound
“ horse, was, at the time of his being sold,
“ unsound, by having a disease called the
“ spavin, or by having another disease called
“ the thoroughpins? ”

“ Whether the said horse, sold and deli-
“ vered as aforesaid, was at the time of his
“ being sold an unsound horse? ”

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“ Whether, upon the 3d day of June
“ 1819, the defender did agree to receive
“ back the horse sold as aforesaid, on condi-
“ tion of the pursuer paying the King’s duty,
“ whether the said horse was sound or un-
“ sound ?”

Walker, in opening the case, and *Cockburn*, in reply, stated—There may be difference of opinion as to the cause of the unsoundness ; but the horse is proved to be unsound. This is a question of medical science, where opinion is to be taken as fact ; and we have proved the case.

Jeffrey, for the defender.—The eye with which a horse is examined by a friend or foe, is very different ; and there is frequently rash swearing. Here part of the evidence does not deserve so mild an epithet.

LORD CHIEF COMMISSIONER.—It is said you ought to weigh, and not to number the witnesses, and in this I agree ; but although I think a few might have been spared, I am not prepared to say, that in this case numbers have not some weight.

There are here three classes of evidence ; and though there is contrariety of evidence, I cannot say that it is not honest. There is

the evidence of those who were acquainted with the history of the horse—of those who examined it after the sale—and of those who examined it after it was dead.

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Had the case depended on the first Issue, I must probably have entered into a detail of the evidence as to the different kinds of spavin; but the case is much simplified, as it appears to me to depend on the second Issue. I do not think the third Issue proved; and therefore the question is, whether the horse was unsound. The witnesses who considered the horse unsound, stated that there was the appearance of blistering; and this is an important circumstance, as it shews that these witnesses examined the horse under the idea that he had been blistered. Now, we have it proved, that during his whole life he never was blistered; so that finding they rest part of their evidence upon a mistake, that appears to me to explain the contrariety of evidence.

Verdict for the defender on all the Issues.

Cockburn and Walker, for the Pursuer.

Clerk, Jeffrey, and Brownlee, for the Defender.

(Agents, Walker, Richardson, and Melvill, and John Jones.)